

## NOSB ITEM FOR PUBLIC COMMENT

The National Organic Standards Board (NOSB) is seeking public comment on recommendations regarding ***“Compatibility With Organic Production and Handling”*** until March 5. With respect to receipt of comments by the NOSB during the comment period, the following provisions have been established to ensure that your comment has the greatest probability of being received and reviewed by the Board:

- **Mail:** Persons may submit comments on listed Board recommendations by mail to: The National Organic Standards Board; c/o Keith Jones; Room 4008 - South Building; 1400 and Independence Avenue, SW; Washington, D.C. 20250-0001.
- **E-mail:** Comments may be sent via internet to respective Board committees by submitting an E-mail to Board committee E-mail accounts provided with each recommendation.
- **Fax:** Comments may be submitted by fax to (202) 205-7808.

Clearly indicate if you are for or against the Board recommendation or some part of it and why. Include recommended wording changes as appropriate. Include a copy of articles or other references that support your comments. Only relevant material should be submitted.

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**NATIONAL ORGANIC STANDARD BOARD WORKING DRAFT:  
“COMPATIBILITY WITH ORGANIC PRODUCTION AND HANDLING”  
ORIGINALLY ADOPTED BY NOSB OCTOBER 24, 2003  
REVISED BY POLICY DEVELOPMENT COMMITTEE JANUARY 30, 2004  
BASED ON COMMENTS RECEIVED**

### ISSUE:

The NOSB has been asked to assist the National Organic Program by obtaining public input and issuing a recommendation on the following question: What are the factors (reasons, issues, parameters, strictures, limitations) and constraints that the National Organic Standards Board should use to determine a substance’s compatibility with a system of sustainable agriculture and its consistency with organic farming and handling?

### **NOSB Guidance Document on Compatibility with a System of Sustainable Agriculture and Consistency with Organic Farming and Handling**

In order to determine if a substance, its use, and manufacture are compatible with a system of sustainable agriculture and consistent with organic farming and handling, and in consideration of the NOSB Principles of Organic Production and Handling, the following factors are to be considered:

- a) Does the substance promote plant and animal health by enhancing soil physical, chemical, or biological properties?
- b) Does use of the substance encourage and enhance preventative techniques including cultural and biological methods for management of crop, livestock, and/or handling operations?
- c) Is the substance made from renewable resources? If the source of the product is non-renewable, are the materials used to produce the substance recyclable? Is the substance produced from recycled materials? Does use of the substance increase the efficiency of resources used by organic farms, complement the use of natural biological controls, or reduce the total amount of materials released into the environment?
- d) Does use of the substance have a positive influence on the health, natural behavior, and welfare of livestock?
- e) Does the substance satisfy expectations of organic consumers regarding the authenticity and integrity of organic products?
- f) Does the substance allow for an increase in the long-term viability of organic farm operations?
- g) Is there evidence that the substance is mined, manufactured, or produced through reliance on child labor or violations of applicable national labor regulations?
- h) If the substance is already on the National List, is the proposed use of the substance consistent with other listed uses of the substance?
- i) Is the substance consistent with other substances historically allowed or disallowed in organic production and handling?
- j) Would approval of the substance be consistent with international organic regulations and guidelines, including Codex?
- k) Is there adequate information about the substance to make a reasonable determination on the substance's compliance with each of the other applicable criteria? If adequate information has not been provided, does an abundance of caution warrant rejection of the substance?
- l) Does use of the substance have a positive impact on biodiversity?
- m) Does the substance facilitate the development of new organic products?

## Summary of Comments

Six sets of comments were submitted in response to the NOSB's call for comments on the working draft. The comments are summarized below, beginning with general comments and following the order of the text above, ending with a discussion of new items suggested by commenters.

**General comments** – Several commenters took the position that petitioners should not automatically be required to satisfy all of the items, but that each item serves as one indicator of compatibility during NOSB discussion of materials petitioned. In other words, there should not be a numerical summing of the items, but consideration of all the items as a whole would show the relative compatibility of a material with organic production and handling. None of the criteria should be considered an absolute requirement of a petition or TAP review.

One commenter pointed out that what is considered sustainable may change over time. As the state of the art and technology advances, so does the understanding of sustainability. What may be incompatible at one point in time may be later found to be compatible due to technological improvements that overcome problems considered unsustainable or to additional data that clarifies the long-run implications of a substance's use. On the other hand, those who consider a substance sustainable at one point may later decide that the same substance is unsustainable given new data regarding the impact of continued use. Innovation and acceptance of new technologies, and research that discovers previously unknown beneficial or adverse effects that result from the use of certain substances are reasons that can justify reconsideration of NOSB recommendations or NOP standards.

Another commenter mentioned that a well crafted standard must be 1) clearly written, 2) measurable, and 3) verifiable using methodology that is both practical and accessible. The NOSB's evaluation criteria, which function as standards for defining the types of materials allowed for use in organic systems, provide valuable guidance on which aspects of "compatibility" must be assessed. However, the lack of endpoints associated with each criterion will create difficulties when the criteria are used during the petition and evaluation processes.

In order for the criteria on "compatibility" to be adequately understood by petitioners and implemented by the NOSB, the commenter urges the NOSB to further develop the criteria by associating each with a qualitative and/or quantitative endpoint which will define acceptable, measurable ranges for materials being assessed.

The same commenter encourages the NOSB to develop decision making procedures for materials review. The NOSB Materials Committee has been using flowcharts to show the timing and flow of the decision making process from petition to TAP to NOSB to the Secretary, but the effort to clarify the NOSB's materials evaluation process will require detailed written procedures as well. The commenter suggests that this information be incorporated into the NOSB Policy Manual.

Another commenter acknowledged that OFPA 6518(m)(7) has historically been a challenge to quantify, yet "Compatibility with a system of sustainable agriculture" is a critical component when considering a material for inclusion on or prohibition from the National List. The commenter felt that the eleven factors identified in the recommendation will go a long way to quantify the Board's reasons for their decisions. "Legally and for historical precedence this is beneficial." The eleven factors must all be examined for applicability and compatibility but they must each be weighed and not considered as ultimate criteria for inclusion or exclusion. "As first hand witnesses throughout the development of this recommendation we believe the exercise was conducted fairly and thoroughly and that the NOSB has done a commendable job with this draft recommendation."

### **Comments on Specific Sections:**

**Introduction** – One commenter specifically mentioned support for the reference to the NOSB Principles in the Introduction, saying, "these should be the basis for all NOSB actions involving standards development and materials review." The commenter felt that the term "when applicable" is unnecessary, and indicates that some criteria may be ignored without a clear

reason for so doing. While some may not apply, they should all be considered by the NOSB and explicitly identified as “not applicable” with justification.

The phrase “when applicable” has been deleted.

**a)** – One commenter does not endorse or support items a, b, c, d, and k. The only reason given was “the difference between a benign result, a neglectful result, and a positively good result of the use of any material.” The commenter “does not feel comfortable mandating the demonstration of a positive result and feels that demonstrating the benign nature of a material is a better approach and is more consistent with OFPA and the NOP Rule.”

Items a, b, c, d, and k have not been deleted, but they have been changed to reflect other comments.

**b)** – A commenter felt that the intent of item b is not clear. The commenter reasoned that, “in general, sustainable and organic systems stress the use of preventive cultural or management practices that reduce the need for synthetic inputs for disease control, insect management, or soil fertility. Prophylactic materials use is often considered unsustainable. Certain preventative management practices are explicitly prohibited in organic production: subtherapeutic feeding of antibiotics, routine use of parasiticides, and administration of medications in the absence of illness. Integrated Pest Management techniques often rely on prophylactic use of pesticides in anticipation of problems that will require even greater amounts of biologically active substances if an organism is not controlled in a timely way. For example, fungicides may be applied prior to wet weather or on a calendar basis to inhibit spore germination.”

Item b has been changed to better reflect the sentiments expressed by the commenter and to clarify the intent of the Board, to read, “Does use of the substance encourage and enhance preventative techniques including cultural and biological methods for management of crop, livestock, and/or handling operations?”

**c)** – A commenter pointed out there are actually three sustainability factors addressed in item c: (a) a preference for renewable resource use over non-renewable resource use; (b) a preference for recycling over resource depletion and disposal; and (c) efficient resource use. Manufacture, use, and disposal, as well as employment of renewable resources and recycling, are included under criterion (3) in TAP reviews. Historically, TAP reviewers have generally agreed that non-renewable, energy-intensive, and fossil fuel-dependent materials were unsustainable. Alternative inputs have been taken into consideration in criterion (6) in the TAP reviews.

The commenter suggested that the NOSB consider the intent of the last clause of the factor. Asking if a petitioned external input ‘reduces dependency on external inputs’ presents a contradiction or paradox. In some cases, a petitioned substance may provide an advantage over existing permitted materials, but this issue can be addressed more directly when considering alternatives under criterion (6). If the intent is to increase efficiency of resource use and reduce the application of both biologically active substances and the total amount of materials released into the environment, a particular inert ingredient might increase the efficacy of a formulation and reduce the rate at which a synthetic active ingredient is applied and the amount of formulated

product released into the environment. Certain inert ingredients, binders, and carriers can also improve farmer and worker safety by reducing exposure to harmful substances.

Item c has been re-worded into separate sub-points to better reflect the intent of the Board and to break the item down into quantifiable factors.

**d)** – One commenter stated, “Livestock concerns are not specifically addressed in the other factors and deserve specific mention.” The commenter suggested changing the reference from “animal” to “livestock” to avoid prohibiting materials that disrupt the behavior of pest animals (e.g., deer repellents) or confuse insects (e.g., pheromones).

The word “animal” has been changed to “livestock”.

**e)** – Several commenters endorsed the item, but felt that the NOSB should specify that it is concerned with the expectations of those who currently buy organic food, and not the entire marketplace. They commented that the question of compatibility is in many ways consumer-driven and is based on the acceptance in the marketplace of different techniques. Above all, with organic food production as a consumer-driven system, it is the consumer, not the producer or processor, who ultimately should guide the criteria for compatibility.

One commenter pointed out that use of the phrase “authenticity and integrity” is consistent with Codex Guidelines and IFOAM criteria, and means that the use of the substance should not be deceptive or misleading.

Another commenter felt that consumer expectations are very important. Furthermore, the organic food industry is vulnerable to consumer backlash so this factor must be carefully considered. “Unfortunately consumers are increasingly out of touch with food production reality making this factor both important and potentially dangerous.”

The word “organic” has been inserted to clarify the Board’s intent.

**f)** – One commenter stated that the inclusion of “economic viability” in item f is a “gigantic loophole whereby excuses can be made to allow for materials that do not fulfill the other ten criteria.” The commenter felt that this criterion could put many diligent organic farmers at a competitive disadvantage because they choose not to use an unsound material in their organic system, while a producer more motivated by greed than by ecological stewardship reaped unfair economic rewards.” The commenter urged deletion of item f.

Another commenter pointed out that one of the most critical factors to address in the consideration of economic viability is the difficulty in obtaining reliable data. “Economic viability needs to be examined in context and requires a more comprehensive level of study than is generally available in a TAP review. Specific factors to consider regarding economic viability would have to be spelled out clearly, so that petitions can provide accurate economic data and each TAP review evaluates this criterion in a consistent way each time. If the NOSB wants to include economic considerations as a factor in sustainability, they may want to consider the factor in a broader sense.”

In response to the comments cited above, and as suggested by several commenters, item f has been re-worded to read, “Does the substance allow for an increase in the long-term viability of organic farm operations?”

**g)** – Several commenters opposed inclusion of item g. As one stated, “the consideration of working conditions is too specific to make generic materials decisions in most cases. While there may be a few substances that are produced or manufactured by a limited number of sources under working conditions that would violate this principle, such a question is really specific to a particular manufacturer and is really a brand name review issue.” The commenter suggested that this particular factor be deleted for the purposes of evaluating petitioned generic substances.

Another said, “since the goal of this document is to define criteria that can be tangibly quantified in order to justify NOSB decision it is our opinion that such factors not be included.”

In order to focus on quantifiable evidence linked to applicable national labor regulations, item g has been changed to read, “Is there evidence that the substance is mined, manufactured, or produced through reliance on child labor or violations of applicable national labor regulations?”

**h)** – A commenter pointed out that the wording of item h seems to imply that the substance in question is already on the National List, and the petition is to modify or remove the annotation.

Item h has been re-phrased to clarify the intent of the Board, to read, “If the substance is already on the National List, is the proposed use of the substance consistent with other listed uses of the substance?”

**i)** – There was no opposition to item I, and no changes suggested. One commenter pointed out that while substances should not be automatically allowed simply because of historical use or prohibited because they are new, this factor needs to be taken into consideration and given an appropriate weight, with a justification for the change from the historical status.

**j)** – Several commenters did not like the phrasing of item j and suggested changes. As one stated, “the actual status of a given substance in various foreign markets is less important than the process of determining what is allowed and the basis for making that decision.” In the interest of greater clarity, specificity, and harmony with other national as well as international standards, commenters provided text which gives more specific and quantifiable guidance to petitioners, TAP reviewers, the NOSB, and the Secretary.

Item j has been changed to read, “Would approval of the substance be consistent with international organic regulations and guidelines, including Codex?”

**k)** – Several commenters supported inclusion of the concept of precaution, but urged that the item be re-written to better function as an evaluation point. One commenter sees the precautionary principle as an overarching principle related to compatibility and consistency with organic systems. As the commenter stated, “the principle is basic common sense: better safe than sorry, look before you leap.” The entire National List process can be considered to be an

application of the precautionary principle, yet this principle is not specifically embodied in the other criteria or in procedural policies for decision-making.

The commenter supported inclusion of the concept in this section as a reminder to those participating in the review process, as well as those filing petitions. As pointed out, “synthetic substances are generally considered unsustainable by OFPA. The burden is on the petitioner—not on the NOSB, the NOP, or the public—to establish that a given synthetic substance is sustainable. In the case of a petition to prohibit a non-synthetic substance, the presumption is that a natural substance is sustainable and the petitioner must demonstrate that it is unsustainable.”

Another commenter strongly supports use of the Precautionary Principle (PP) in the materials evaluation process. But, because the commenter sees the PP as an overarching principle of decision making, the commenter disagrees with its inclusion as an evaluation criterion. The commenter stated, “it is a critically important concept that should be considered in relation to each relevant evaluation criterion.”

A third commenter reminded the Board that “writing a petition is set up for and needs to remain simple enough for non-scientifically trained parties to complete. In recent years there has been a disturbing trend to require information from the petitioner that could be ferreted out by the TAP process. Petitioning the National List needs to remain accessible by the lay user or producer.”

In order to address the concerns summarized above, item k has been re-phrased to read, “Is there adequate information about the substance to make a reasonable determination on the substance's compliance with each of the other applicable criteria? If adequate information has not been provided, does an abundance of caution warrant rejection of the substance?”

**l)** – Two commenters urged inclusion of a criterion to address biodiversity, and they suggested tools by which biodiversity can be assessed. “Researchers have developed several indices that can help to compare and evaluate the impact of various specific management practices on intra-specific and inter-specific biodiversity.”<sup>1</sup>

A new item l has been inserted to address biodiversity, to read, “Does use of the substance have a positive impact on biodiversity?”

**m)** – One commenter suggested that the following be included, “Will the use of the material not limit or halt the development of new organic products?”

A new item m has been inserted which reads, “Does the substance facilitate the development of new organic products?”

Another commenter urged inclusion of an item which addresses protection of organic integrity. As stated, “given that the application or use of a given prohibited substance used to produce or handle food will result in loss of organic status, substances that protect organic food from the

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<sup>1</sup> Peter Kenmore, editor, *Biodiversity and the Ecosystem Approach in Agriculture, Forestry, and Fisheries*. (Rome, Food and Agriculture Organization, 2003). <http://www.fao.org/DOCREP/005/Y4586E/Y4586E00.HTM>

loss of organic status can be viewed as compatible. In particular, one rationale behind allowing equipment cleansers in (7 USC 6517(c)(1)(B)(i)) was that they helped to prevent contaminated equipment from compromising the organic integrity of an organic product. The use of such products cannot be construed as permitting the intentional application of prohibited substances, but their allowance helps to prevent organic food from losing its status due by helping the operator avoid contamination. The Codex criteria also take into account the protection of organic integrity.”

In the opinion of the Policy Development Committee, the issue of organic integrity is already addressed in a quantifiable manner in item e. Therefore, a new item has not been proposed.